

**DOWNEY BRAND**

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May 16, 2016

**VIA FACSIMILE ONLY - (916) 227-6282**

DEPARTMENT OF TRANSPORTATION  
DIVISION OF ENGINEERING SERVICES  
Office Engineer, MS-43  
P.O. Box 168041  
Sacramento, CA 95816-8041

**Re: Contract No. 05-4482U4  
05-SB-101-2.2/3.3  
Project ID 0500000543  
Bid Opened: 04/27/2016**

Dear Sir/Madam:

My office represents Rasmussen/Myers and Sons the lowest responsive, responsible bidder on Caltrans' Contract No. 05-4482U4 (the "Contract"). Please consider this letter a protest of the bid submitted by Security Paving Company, Inc., for the Contract, because Security's bid is nonresponsive.

**A. Security's Bid Is Nonresponsive Because Its DBE Commitment Paperwork Is Not Consistent With The Subcontractor List In The Bid.**

The Revised Standard Specifications, Section 2-1.33D(2)(b), provides that on Contracts with a DBE Goal, the bidder must submit their Certified DBE Summary to Caltrans by 4:00 p.m. on the 4th business day after bid opening. Moreover, the instructions on the DBE Commitment form state "Names of the First Tier DBE subcontractors and their items of work must be consistent with the Subcontractor List." Caltrans has found that any divergence from the Subcontractor List and the DBE Commitment Form result in the bid being nonresponsive. (See April 27, 2016, Letter from J. Sewell to Papich Construction Company, enclosed as **Exhibit A.**)

Here, Security's DBE Commitment form does not match its Subcontractor List. For Bid Item 127, which is "Drive 48" Steel Pipe Piling," Security bid \$35,500.00 each time a quantity of 4 for a total of \$142,000. On its Subcontractor List, Security listed Tipco Engineering as performing 100% of Bid Item 127. However, based upon Tipco's bid to Security, which Security provided with its DBE Commitment, it appears Tipco is not performing 100% of the work in Bid Item No. 127 because Tipco's bid for that item is only \$10,000 each (for a total of \$40,000) or \$102,000 less than Security bid for that item. (See Security DBE Commitment Form, enclosed as **Exhibit B**; Tipco's Revised Subcontract Proposal enclosed as **Exhibit C.**) Per Tipco's bid, it appears Tipco is only performing 28% of Bid Item 127, not 100% as represented by Security in its Subcontractor List. Because Security's Subcontractor List is

## DEPARTMENT OF TRANSPORTATION

May 16, 2016

Page 2

inaccurate and it is not consistent with the DBE Commitment, its bid is nonresponsive. (See April 27, 2016, Letter from J. Sewell to Papich Construction Company, enclosed as **Exhibit A.**)

**B. Security's Bid is Nonresponsive Because It Listed Two Subcontractors For The Same Scope of Work, And Its Claim Of Error Was Not Timely.**

Security's bid is also non-responsive as it improperly listed multiple subcontractors for one scope of work. Public Contract Code section 4104 and the Revised Standard Specifications require that each bidder list the name, location of place of business, type of work, portion of work, public works registration number and license number for each proposed subcontractor. Moreover, Public Contract Code section 4104, requires that the "Contractor shall list only one subcontractor for each portion of work in the bid."

Here Security admittedly listed High Light Electrical, Inc., and Chrisp Company as performing 100% of Bid Item No. 268. Allowing Security to list two subcontractors for the same scope of work allows Security to bid shop. The Legislature enacted the Subletting and Subcontracting Fair Practices Act (the "Act") to prevent bid shopping and bid peddling after the prime contractor has been awarded the project. (Pub. Cont. Code, § 4101.) This is accomplished by stating the portion of the work the subcontractor is to perform and the type of work. "If a certain subcontractor is listed, for example, as performing masonry work, the public entity can determine that particular subcontractor is performing the masonry work, not another subcontractor that was pressured to perform at a lower cost." (*Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1440.) With two listed subs, Security has the ability to force the subcontractors to lower their prices, all to the benefit of Security. This is exactly what the Act was intended to prevent. (Pub. Cont. Code, § 4104 [stating bid peddling and bid shopping "result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among prime contractors and subcontractors, and lead to insolvencies, loss of wages to employees and other evils."].)

**1. Security's Belated Attempt To Cover Up Its Non-Responsive Bid Should Be Rejected.**

Admitting its bid was non-responsive, Security attempted to cure its non-responsive bid by claiming its listing of two subcontractors was a clerical error and it sought relief under Public Contract Code section 4107.5. Security's attempt to remedy its non-responsive bid, however, must be rejected by Caltrans, because Security has not timely moved for relief under section 4107.5. Section 4107.5 provides in relevant part:

The prime contractor as a condition to assert a claim of inadvertent clerical error in the listing of a subcontractor shall within two working days after the time of the prime bid opening by the awarding authority give written notice to the awarding authority . . .

The bids were opened for this project on April 27, 2016, a Wednesday. Two business days would have been Friday, April 29, 2016. Security, however, did not send its letter in to Caltrans until Monday, May 2, 2016, which is five days after bid opening and three business days after

## DEPARTMENT OF TRANSPORTATION

May 16, 2016

Page 3

bid opening. Moreover, section 4107.5 goes on to require that in order for a contractor to get relief under section 4107.5, the contractor must also provide an "affidavit" to Caltrans outlining how the alleged inadvertent error was made. The affidavits are required within "eight working days" of bid opening. Eight working days of April 27, 2016, is May 9, 2016, but, as of today, May 16, 2016, Security had not submitted any affidavits to Caltrans. (See March 2010, Powerpoint from Caltrans, enclosed as **Exhibit D**, [indicating any claim of clerical error must be provided to Caltrans within two business days "under penalty of perjury"].) Therefore, Security is not entitled to relief under section 4107.5, which leaves Security with two listed subcontractors for one bid item, a clear violation of the Act and the Standard Specifications, making Security's bid non-responsive.

**2. Security's Attempts To Circumvent The Listing Law Also Makes Its Bid Non-Responsive**

After bid opening, Security is attempting to add Bid Items to High Light Electric's scope of work. Specifically, Security claims that it intended to list High Light for Bid Item 286 "Operations Systems," but it admittedly did not list that item in its bid, nor did it list Bid Item 286 in the DBE Commitment form for High Light. What is most disturbing about Security's conduct, however, is that High Light's bid, which is included in the DBE submittal by Security, does not even include a proposal to do the work listed in Bid Item 286. Thus, it appears post-bid opening Security approached High Light in an effort to get them to provide Security with a price, knowing that Security was the apparent low bid. Now Security is approaching Caltrans and attempting to claim that High Light was intended to perform this work on bid day. Even if Security has not bid-shopped High Light, allowing it to add Bid Items to High Light's scope post-bid opening creates a perfect environment for bid shopping. Security's conduct should not be sanctioned by Caltrans and Security should not be provided with a Caltrans sanctioned opportunity to bid shop.

**Conclusion**

Security's bid is non-responsive because its DBE Commitment does not match its Subcontractor List. Additionally, Security's bid is non-responsive because it lists two subcontractors for the same scope of work, and Security's attempt to fix its non-responsive bid by claiming clerical error under the Act is too late. Rasmussen/Myers and Sons is the lowest responsive, responsible bidder and should be awarded the Contract.

Very truly yours,

DOWNEY BRAND LLP



Matthew J. Weber

MJW:bs

## **Exhibit A**



STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

**DEPARTMENT OF TRANSPORTATION**

DIVISION OF ENGINEERING SERVICES

OFFICE ENGINEER

1727 30th STREET, MS-43

P.O. BOX 168041

SACRAMENTO, CA 95816-8041

PHONE (916) 227-6299

FAX (916) 227-6282

TTY 711

www.dot.ca.gov

*Serious drought.  
Help save water!*

April 27, 2016

Facsimile: (951) 674-7495

Jason Papich, President  
Papich Construction Company, Inc.  
P.O. Box 2210  
Pismo Beach, CA 93448

06-0T6504  
06-Fre-5-10.0/20.0  
B.O. 4/19/16

Dear Mr. Papich:

The Department of Transportation (Caltrans) received a bid submitted by Papich Construction Company, Inc. (Papich) for the above referenced contract on April 19, 2016. By this letter, Caltrans notifies Papich that its bid is nonresponsive because of an inconsistent Disadvantaged Business Enterprise (DBE) Commitment form and Subcontractor List form.

The instructions on the DBE Commitment form states: "*Names of the First Tier DBE subcontractors and their items of work must be consistent with the Subcontractor List.*"

On the Subcontractor's List form, Papich identified Super Seal & Strip (Super Seal) as performing work described as bid items 3, 15, 16, 17, and 18. However, on the DBE Commitment form Papich listed Super Seal as performing the same bid items and included bid items 19 and 20. The inclusion of these additional items changes the scope of work to be performed by Super Seal and constitutes a change that is not consistent with the Subcontractor List form.

Based on the above, Caltrans finds Papich is nonresponsive. Caltrans will proceed to award the contract to the lowest responsible bidder provided all requirements are met.

Your attention is directed to Section 3-1.04 of the 2010 Standard Specifications. Caltrans is not obligated to offer an extension of the award period for a nonresponsive bid. Should you wish to extend your bid while resolving a nonresponsive finding, you must send your request to the Office Engineer no later than 4:00 p.m., two business days prior to the expiration of your bid.

If you have any questions, please contact Mulissa Smith, Contract Awards Branch Chief, at (916) 227-6228.

Sincerely,

A handwritten signature in cursive script, reading 'Jill Y. Sewell'.

JILL Y. SEWELL

Office Chief

Office Engineer, Construction Contract Awards  
Division of Engineering Services

## **Exhibit B**

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
**DBE - COMMITMENT**  
 DES-OE-0102.10D (REV 12/2014)

CONTRACT NO. 05-4482U4

BID AMOUNT: \$ 52,615,704.00

BID OPENING DATE: 04/27/2016

BIDDER'S NAME: Security Paving Company, Inc.

DBE GOAL FROM CONTRACT %: 13.0

# Low Bidder

DBE PRIME CONTRACTOR CERTIFICATION <sup>1</sup> : N/A	TOTAL NUMBER OF ALL SUBCONTRACTS (DBE & NON-DBE): 14	TOTAL VALUE OF ALL SUBCONTRACTS (DBE & NON-DBE): 14,069,037.00
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BID ITEM NO	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED <sup>2</sup>	WORK CATEGORY CODES <sup>3</sup>	NAME OF DBEs (Must be certified on the date bids are opened. Include Caltrans' certification no., DBE address, and phone number. Show 2nd and lower tier subcontractors)	AMOUNT (\$)
274 - 281	Electrical	C8602, C8604, C8605	High Light Electric, Inc. #28842 7000 Jurupa Ave. Riverside, CA 92504 951 427-2840	1,328,888.00
34, 38-42, 225-229, 232, 235, 237-247	Fence and Guard Rail	C0680, C8000 C8320, C8391	Acc Fence Company #34153 727 N. Glendora Ave. La Puente, CA 91744 626 333-0727	1,189,320.00
151-153	Joint Seal	C4040, C4101	Austin Enterprise #13602 13421 Snow Rd. Bakersfield, CA 93314 661 589-1001	95,025.00
21, 22, 98, 101-108	Mulch, Compost, and Erosion Control	C0780, C2021 C2030, C2066	J&M Land Restoration, Inc. #32481 1640 James Road Bakersfield, CA 93308 661 872-7039	641,693.90
69	Clear and Grubbing	C1601	CGO Construction Company #4483 3100 E. Cedar St #14 Ontario, CA 91761 909 930-5501	330,300.00
*Continued On Next Page				

Show all DBE firms being claimed for credit, regardless of tier. Attach written confirmation from each DBE shown stating that it will be participating in the contract to perform the specific work shown for the specific amount agreed to.

The names of the 1st tier DBE subcontractors and items of work must be consistent with the Subcontractor List (Pub Cont Code § 4100 et seq.).


<sup>1</sup>Each DBE prime contractor must enter its certification number and show all work to be performed by DBEs, including work performed by its own forces.

<sup>2</sup>If 100% of an item is not to be performed or furnished by the DBE, describe the exact portion of the item to be performed or furnished.

<sup>3</sup>Use Work Category Codes from the California Unified Certification Program database.

\*Continued On Next Page

Total Claimed  
Participation

\$ 

The bidder acknowledges that it is committed to use the DBEs shown on this form to meet the contract goal (49 CFR 26.53).

\*See Next Page

Signature of Bidder

5/2/16

Date

(815) 362-9200  
(Area Code) Tel. No.

Jim Crews

Person to Contact

(Please Type or Print)

**ADA Notice**

For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, TTY 711, or write to Records and Forms Management, 1120 N Street, MS-B9, Sacramento, CA 95814.

Contract No. 05-4482U4

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
**DBE - COMMITMENT**  
 DES-OE-0102.10D (REV 12/2014)

CONTRACT NO:	05-4482U4
BID AMOUNT:	\$ 52,615,704.00
BID OPENING DATE:	04/27/2016
BIDDER'S NAME:	Security Paving Company, Inc.
DBE GOAL FROM CONTRACT %:	13.0
DBE PRIME CONTRACTOR CERTIFICATION <sup>1</sup> :	N/A
TOTAL NUMBER OF ALL SUBCONTRACTS (DBE & NON-DBE):	14
TOTAL VALUE OF ALL SUBCONTRACTS (DBE & NON-DBE):	14,069,037.00

BID ITEM NO.	ITEM OF WORK AND DESCRIPTION OF SERVICES TO BE SUBCONTRACTED OR MATERIALS TO BE PROVIDED <sup>2</sup>	WORK CATEGORY CODES <sup>3</sup>	NAME OF DBEs (Must be certified on the date bids are opened. Include Caltrans' certification no., DBE address, and phone number. Show 2nd and lower tier subcontractors)	AMOUNT (\$)
4, 5, 46, 47, 54, 55 161-175, 231, 233	Construction Area Signs, Roadside Sign, Furnish Sign, Delineator, Object Marker	C1200, C5620 C8201	KRC Safety Co, Inc. #447 7821 W. Sunnyview Visalia, CA 93291 559) 732-0393	744,844.39
126-133	Furnish and Drive Pile	C4901	Tipco Engineering, Inc. #37925 425 E. Redondo Beach Blvd Gardena, CA 90248 310) 515-6549	2,329,185.00
13, 72-76, 78, 79, 109	Provide Operated Trucking	C9602, C9605, C9774	Rangel Brothers Trucking #30516 601 S. Brand Blvd, STE 102 San Fernando, CA 91340 818) 266-5179	587,984.00
180-186, 196, 197	Furnish Pipe Culvert and Flared End Sections	C0670	Triumph Geo-Synthetics, Inc. #9076 1235 N. Grove St Anaheim, CA 92806 714) 237-1550	239,696.90
114	Furnish and Deliver Asphalt Oil	C0624	LMS Transport #38327 2751 Avalon St Jurupa Valley, CA 92509 951) 616-3828	176,312.70

Show all DBE firms being claimed for credit, regardless of tier. Attach written confirmation from each DBE shown stating that it will be participating in the contract to perform the specific work shown for the specific amount agreed to.

The names of the 1st tier DBE subcontractors and items of work must be consistent with the Subcontractor List (Pub Cont Code § 4100 et seq.)

<sup>1</sup>Each DBE prime contractor must enter its certification number and show all work to be performed by DBEs, including work performed by its own forces.

<sup>2</sup>If 100% of an item is not to be performed or furnished by the DBE, describe the exact portion of the item to be performed or furnished.

<sup>3</sup>Use Work Category Codes from the California Unified Certification Program database.

\*Continued From Last Page

\$ 7,663,249.89

Total Claimed  
Participation

14.56 %

The bidder acknowledges that it is committed to use the DBEs shown on this form to meet the contract goal (49 CFR 26.53).

Signature of Bidder

Date

Person to Contact

5/12/16 (516) 362-9240  
(Area Code) Tel. No.

(Please Type or Print)

**ADA Notice**

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Contract No. 05-4482U4

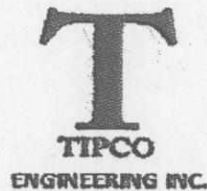


## Exhibit C

APR/27/2016/WED 02:13 PM Tipco Engineering

FAX No. 925 932 8924

P. 001/002



425 E. Redondo Beach Blvd  
Gardena, CA 90248  
Lic# 928364  
Certified DBE Firm ID No. 37925

OFFICE (310) 515-6549

FAX (866) 623-8349

**REVISED**  
**SUBCONTRACT PROPOSAL**

To: Estimator  
Project: Caltrans Contract 05-4482U4 - Route 101 Carpinteria, CA

Bid Date 4/27/2016

Prepared By: Anthony Will

Item	Description	Unit	Quantity	Unit Price	Price
126	Furnish 48" Steel Piling	LF	291	\$ 450.00	\$ 130,950.00
127	Drive 48" Steel Piling	EA	4	\$ 10,000.00	\$ 40,000.00
128	Furnish Piling (Class 140 Alt. W)	LF	258	\$ 45.00	\$ 11,610.00
129	Drive Pile (Class Class 140 Alt. W)	EA	10	\$ 1,650.00	\$ 16,500.00
130	Furnish Piling (Class 200 Alt. W)	LF	16,055	\$ 55.00	\$ 883,025.00
131	Drive Pile (Class Class 200 Alt. W)	EA	302	\$ 1,650.00	\$ 498,300.00
132	Furnish 78" CISS Concrete Piling	LF	784	\$ 700.00	\$ 548,800.00
133	Drive 78" CISS Concrete Piling (Parti	EA	10	\$ 20,000.00	\$ 200,000.00
<b>Base Price</b>					<b>\$ 2,329,185.00</b>

Our price is based on the following conditions and our general conditions, which are attached.

**Terms and Conditions**

**Included in our proposal are:**

1. Bondable (1.00%) Union Contractor signatory to Pile Drivers and Operating Engineers.
2. Proposal includes Two (2) single crane mobilizations to complete all piling work identified.
3. Driving system, Arc Weldable Instrumentation (Stage 1 Only) Shop Drawings, Installation, and monitoring. Furnish and Installation of the shear rings. Pile cut offs and debris disposal.
4. Optional - Removal of existing concrete piling - \$20,000/EA - Loaded on Contractors trucks for disposal. Excavation exposing 3'-0" top of each piling with 6' clearance by others.

**Specifically excluded from our proposal**

5. Bid Item 133 Drill Out; Clean Out; Rebar and Concrete.
6. All engineering, excavation, shoring unless otherwise noted, spoil removal, backfill, Dowels, QCP/Third Party Inspection, drawings, or pile driving records. Truck crane and pile handling equipment access to/between each location. WQCP, Welding Inspection (please figure 7 days onsite welding), Traffic Control, Lighting, K-rail Removal, Noise Monitoring, Vibration or

## **Exhibit D**

# Constructing Contracting With Caltrans

“I’m the Low Bidder - Now What?”

A Guide to the Contract Award Process

March 2010





# Subcontractor Substitution

If you list a subcontractor in error:

Notify Caltrans of the inadvertent clerical error under penalty of perjury to Caltrans by fax at (916) 227-6282

Fax must be received no later than 2 business days after bid opening

Provide copies to impacted subcontractors

Caltrans may consent to the substitution provided neither subcontractor objects within 6 business days of the bid opening

If a subcontractor objects to the substitution, Caltrans will conduct a hearing to determine if the substitution is granted